IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

CRL.A.No. 1343 of 2004()
{SC.374/2003 OF THE ADDITIONAL SESSIONS COURT,
AD HOC-II, THODUPUZHA}

APPELLANT:

ANTONY @ JOY, S/O. DEVESIA,
C.NO.8559, CENTRAL PRISON,
TRIVANDRUM-695 012.

BY ADV. SRI.GRASHIOUS KURIAKOSE

RESPONDENT:

STATE OF KERALA,
REP. BY A PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI.NOBLE MATHEW

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & V.GIRI, JJ.

CR.A.No.1343 of 2004

Dated this the 9th day of August, 2007.

JUDGMENT

Giri, J.

The accused, in S.C.No.374/03 on the files of the Additional Sessions Judge (Ad hoc)-II, Thodupuzha, charge sheeted and convicted for offences under Sections 302 and 201 of the Indian Penal Code (for short '**the Code**'), is the appellant.

2. The prosecution case, in brief, was that on 20.7.1997, the accused took his son Jojo, aged about 10 years, from the house of his second wife, PW.1, situated at Appappikada, to his house situated at Kombayarkara, Parathode Village, wherein he strangulated Jojo to death. Thereafter, with the intention of destroying the evidence and screening himself, he concealed the body of deceased Jojo by taking an earthen cave and covered the body in that cave with earth.

3. The crime came to light pursuant to an investigation conducted by PW.20, who was the Circle Inspector of Police of the Nedumkandam Police Station

made in August, 2003. The accused was charge sheeted for the offences under Sections 302 and 201 of the Code for having committed the murder of his son Jojo and for having destroyed the evidence of the crime in order to screen himself.

4. The accused pleaded not guilty at the time when the charges were framed and explained to him. His plea was recorded. But, before the commencement of the trial, the accused admitted his guilt. On 3.5.04, the court recorded as follows:

> **"The accused was present. He has admitted his guilt before starting the trial of the case. Cws.1 to 6 are present. Cw.4 given up. Cws.1 to 6 except CW.4 are examined as Pws.1 to 5. Exts.P1 to P7, P2 series, P3 series, P5 series, P7 series, M.Os.1 to 9 series are marked. For further evidence 4.5. Sd/- 3.5"**

5. The prosecution examined Pws.1 to 21, marked Exts.P1 to P25 and identified M.Os.1 to 11 series.

6. PW.1 is the second wife of the accused. PW.6 was the first wife of the accused. PW.10 is the daughter of

the accused in his first wife PW.6. PW.2 is the mother of Pw.1. Pws.3 and 4 are the two brothers of PW.1.

7. The evidence of PW.6, the first wife of the accused, reveals that she left the company of the accused because of his harassment. Deceased Jojo was 6 years old and the younger child Jiji was 2 years, when she left the company of the accused. PW.6 also deposed that she and the accused had lived together for 4 years prior to their marriage solemnised on 4.4.1989 and deceased Jojo was, in fact, born on 4.8.1987, prior to the marriage.

8. The evidence of Pws.1, 2, 3 and 4 would show that the accused had taken Jojo from the house of PW.1 on 20.7.1997 and had brought the boy to the house of the accused. It seems that Jojo was a problem child. It further seems that there were complaints against him by PW.1 and members of her family. This could quite possibly be so because, after all, PW.1 was not the mother of deceased Jojo. Further, Jojo was not being looked after by PW.6, his mother since his age of 6 years.

9. As to what precisely happened in the house of the accused on 20.7.1997, there is no direct evidence as such. Apart from the admission of guilt made by the accused before the court prior to the commencement of the trial, the detailed version given by the accused at the time when his statement was taken under Section 313 of the Code of Criminal Procedure, is also significant. The accused stated that there were incessant complaints by several persons against Jojo and the accused had attempted to correct his son Jojo several times. On the fateful day, according to the accused, after bringing him back from the house of PW.6, the accused had, while inside the house, slapped Jojo once and he was aiming to slap Jojo once more. But the boy tried to evade his father. According to the accused, at that point of time, Jojo had hit his head on an iron rod protruding from a cot placed inside the house and had met with his death.

10. That Jojo met with his death on 20.7.1997 is a fact, which has been established beyond any doubt. The accused was alone with the boy inside the house. The evidence also establishes beyond doubt that the accused

had deliberately buried his body within his property itself to destroy any evidence of the crime and shield himself from law.

11. The crime would have left undetected but for Ext.P18 an anonymous complaint received about 4 years after the incident. The evidence of Pws.1 to 4 would show that the accused was deliberately giving vague and false answers as to the whereabouts of the boy Jojo after 20.7.1997. To some persons, he stated that the boy is sent to Madras and to some others he stated that the boy is with an Advocate in Pala.

12. It is clear from the evidence that deliberate attempt was made by the accused to bury the evidence of his crime. The evidence, in no manner, indicates any repentance on the part of the accused after the crime which might indicate an accident, as contended by the accused. The evidence of PW.7, the daughter of the accused in PW.6 his first wife, would also show that even earlier, Jojo had been assaulted by his father and at one point of time, the accused even attempted to kill Jojo by hitting him with a

stone. The child was also made to believe that Jojo was staying at Madras and will be brought back after completing 18 years.

13. The evidence given by Pws.1 to 4 shows that the accused was making a deliberate attempt to make others believe that Jojo was either at Madras or in some other place, far away from the ordinary place of residence. There was a conscious attempt on the part of the accused to mislead his near relatives regarding the whereabouts of Jojo. There was a conscious attempt on his part to bury all evidence, which could have, in the normal circumstances, triggered investigation, enquiry and ultimately a detection of the crime.

14. It is also significant that both at the stage of committal to the Sessions Court and even when charges were framed, the accused had pleaded not guilty. It is only just prior to the commencement of the trial that he had admitted his guilt. It is not safe to presume that such admission, at a belated stage, especially in relation to a crime like the present one, is true remorse expressed by a

father for having committed an act, which resulted in the death of his own son.

15. After the receipt of Ext.P18 anonymous letter, PW.20 forwarded the same to the Station House Officer, Nedumkandam, PW.19, for registering a case for “man missing”. Further investigation was entrusted with the Circle Inspector of Police, PW.20, who conducted the investigation and arrested the accused, after serving a memo of arrest on 9.2.2002. The accused had admitted his guilt before PW.20. Investigation was, therefore, launched under Sections 302 and 201 of the Code. While in custody, the accused had led PW.20 to the place where Jojo was murdered and the body was buried. Exhumation of the body took place in the presence of the Revenue Divisional Officer, examined as PW.21. Postmortem was conducted by PW.14, who gave Ext.P13 postmortem certificate. Obviously due to the passage of time, the doctor, who conducted the postmortem, could give an opinion only with regard to the skeleton. The approximate time since the death was stated to be more than 2 years. PW.15, the Assistant Director of the Forensic

Laboratory, had examined the skeleton and mandible and examined the body M.O.6 series. Video Super Imposition Test, with the help of the photographs of deceased Jojo, was held. The result, as is revealed in Ext.P14, showed that the skull and mandible exhumed, belonged to the person whose photographs are shown in M.O.9 series. The place from where the body was buried was obviously under the domain of the accused.

16. The evidence on record, which fortified the admission of guilt by the accused, taken along with the statement given at the time when he was questioned under Section 313 of the Code of Criminal Procedure, therefore clearly proved that Jojo died on 20.7.1997; that he was murdered by the accused and that the accused had deliberately concealed the evidence relating to the crime to screen himself.

17. Faced with this situation, learned counsel for the accused Sri.Grashious Kuriakose, confined his argument to just one aspect. He contended that though the accused had admitted his guilt in court prior to the commencement of

the trial, the circumstances of the case would show that there is a true expression of remorse on the part of the accused. He further contended that though a crime was committed, in the circumstances, it should be treated as one of culpable homicide not amounting to murder and not murder punishable under Section 302 of the Code.

18. We are not inclined to accept the submission of the learned counsel. A crime has been committed by the accused. He had put his own son, a 12 year old boy, to death. He had deliberately tried to mislead his own relatives regarding the whereabouts of Jojo. In all probabilities, the crime would have left undetected, but for Ext.P18 letter and the further investigation undertaken at the instance of PW.18 by PW.20. The accused had pleaded not guilty before the court when charges were framed. It is only just prior to the commencement of the trial that he had pleaded guilty. The version sought to be given by him in the statement under Section 313 Cr.P.C., which obviously must have been prepared with the active aid of his counsel in the court below, would show that the accused was actually trying to get out of

the consequences of the heinous crime. We have no hesitation in coming to the conclusion that Jojo was murdered by the accused and no interference is required with his conviction under Section 302 of the Indian Penal Code. If that be so, the sentence of imprisonment for life with a fine of Rs.5,000/- is only appropriate and warranted. The sentence of rigorous imprisonment for a period of 3 years with a fine of Rs.2,000/- for the offence under Section 201 of the Code is also justified and warranted.

In the result, we find no merit in this appeal and hence the same is dismissed.

Sd/-

(J.B.KOSHY)

JUDGE.

Sd/-

(V.GIRI)

JUDGE

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P.S. To Judge

J.B.KOSHY & V.GIRI, JJ.

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JUDGMENT

9th August, 2007.